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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

Estate of GERRE STEINBERG, Deceased.	
HOOY & HOOY, A Professional Law Corporation, Petitioner and Appellant, v. CORNELIA STEINBERG et al., Objectors and Respondents.	A150046 (Contra Costa County Super. Ct. No. P1300941)

A law firm that served as counsel for the initial administrator of a probate estate appeals the probate court's October 4, 2016 order of final distribution and a related order granting the firm's petition for an award of attorney's fees and costs, which together subordinated payment of the attorney's fees award to other payments from the estate's assets and resulted in the firm receiving nearly $50,000 less from the estate's assets than the amount the firm contends was awarded to it. The sole question on appeal is whether the court erred under Probate Code section 11420 by not giving priority to the fee award over other distributions from the estate, as an expense of administration.[1] We conclude it did, and we reverse and remand the law firm's fee claim for further proceedings consistent with this opinion.

[1] All further statutory references are to the Probate Code unless otherwise specified.

BACKGROUND

Gerre Steinberg died intestate, on July 2, 2013. He was survived by his elderly wife, Cornelia Steinberg, and an adult biological son, Stephen Nefas, born to a former girlfriend who concealed the child's paternity from the decedent and surrendered him as an infant for adoption. At age 20, Nefas had learned the decedent was his biological father and became acquainted with the decedent and his wife, and a close relationship had developed. By the time of the decedent's death, Nefas had known the couple for more than eighteen years and regarded the decedent as "a friend, a father figure, and a source of support." Because he'd been adopted by another family, however, Nefas had no intestate succession rights as the decedent's natural born son.[2]

The circumstances of the decedent's death, suggestive of foul play during a home invasion, cast a cloud of murder suspicion on his widow, Cornelia,[3] who was detained, searched and questioned by police and eventually retained defense counsel as the coroner's inquiry dragged on for months. The situation was extremely stressful for her, and it compounded the stress of her bereavement. Her doctor believed she was in a state of shock during the period following her husband's death, and that it was unlikely she was capable of making sound decisions concerning her husband's estate.

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[2] Section 6451 states: "(a) An adoption severs the relationship of parent and child between an adopted person and a natural parent of the adopted person unless both of the following requirements are satisfied: [¶] (1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth[] [and] [¶] (2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents." Neither exception applies here.

[3] We refer to the decedent's widow by her first name to avoid confusion with the decedent.

About ten days after the decedent died, Cornelia and Nefas met with Robert Hooy (hereafter, Hooy), of the law firm Hooy & Hooy (the Hooy firm or the firm). Hooy told them they were entitled to share equally in the estate.[4]

A few days later, on July 17, 2013, Steinberg signed a written retainer agreement in her personal capacity, engaging the Hooy firm to represent her with respect to the filing and administration of her husband's estate.

Subsequently, on July 31, Hooy filed a probate petition identifying both Steinberg and Nefas. It is undisputed that Hooy did not advise Steinberg of her option to avoid formal probate through the less costly, summary procedures available to a surviving spouse (see §§ 13500, 13502, 13650). He also did not file a notice that was required by the court's local rules acknowledging that Steinberg had been advised of, and given informed consideration to, the option of avoiding formal probate through those summary procedures.[5]

For the next several months, Hooy communicated with Nefas as if Nefas were entitled to inherit a portion of the estate. In reliance on Hooy's advice, Cornelia allowed Nefas to move in with her when he broke up with his girlfriend, gave Nefas the decedent's car, helped him financially and gave him most of the decedent's personal property possessions.

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[4] The record does not indicate whether Hooy knew at the time Nefas was adopted. Nefas was introduced as the decedent's "son," but Hooy didn't inquire why Nefas and the decedent had different last names or discuss whether it mattered.

[5] Contra Costa County Superior Court local rule 606, entitled "Inheritance By Surviving Spouse," stated: "Formal probate of community, quasi-community, or separate property passing or confirmed to a surviving spouse in a decedent's estate pursuant to Probate Code Section 13502 must be supported by *a timely written election expressing acknowledgement of a consideration of the alternative procedures available pursuant to Probate Code Section 13650*. Written elections pursuant to Probate Code Section 13502 shall contain *an express acknowledgment that the inclusion of property passing to or belonging to the surviving spouse in the probate estate could result in additional appraisal fees, commissions, and attorney fees*." (Super. Ct. Contra Costa County, Local Rules, rule 606 (effective Jan. 1, 2012), italics added.)

In September 2013, a few months into his firm's engagement, Hooy consulted with Cornelia and then sent Nefas a letter retracting his advice that both of them stood to inherit equally, but stating that Cornelia had decided to "gift" Nefas half the estate anyway so the result would wind up being the same. "Assuming my information is correct" about the details of Nefas' adoption, Hooy wrote, "you have no claim to inherit any of the assets of Gerre Steinberg's estate." Moreover, Hooy stated in that letter, "[a]s I told you and my client when we first met, I can and do represent only Ms. Steinberg," and he advised Nefas to get his own lawyer.

Two months later, in November 2013, Nefas, now represented by counsel, and Cornelia signed a six-page written agreement that Hooy prepared (captioned Distribution and Mutual Release Agreement, and which the parties refer to here as "the distribution agreement"), providing each would share in the estate equally. The premise of the agreement, reflected in its prefatory recitals, was not that Cornelia had opted out of generosity to do this, but that there was a "dispute" the parties wanted to settle, without resorting to litigation, as to whether Nefas "can successfully meet the statutory requirements to inherit from Gerre's estate" under the laws of intestate succession governing adopted children. In later court filings, both Nefas and Cornelia would disavow that characterization, each swearing under oath no such dispute existed. In particular, Nefas averred under oath that "I was legally entitled to nothing," and that Cornelia had merely told him she would honor her late husband's wish to "take care of me." The written agreement included a provision guaranteeing the payment of Cornelia's and Nefas's attorney's fees out of the estate in connection with "negotiating, drafting and obtaining court approval" of the distribution agreement (¶ 6), a benefit Hooy later admitted his firm had procured for itself. Other provisions, albeit perhaps the result of standard drafting practices, also were potentially beneficial to Hooy and his firm given the whiff of mistakes that hung in the air.[6]

[6] The agreement contained a broad release of all known and unknown existing claims that ran in favor not just of Cornelia and Nefas but also their *attorneys* (¶12). They agreed to indemnify everyone—including their attorneys—for any breaches of the

The Hooy firm then sought and obtained the probate court's approval of the distribution agreement, on an ex parte basis. It told the court in its filing: "Time is of the essence in granting this petition. Because of the emotions attached to intrafamilial disputes, Petitioner, her attorney, Stephen, and his attorney, have all agreed the Agreement should be approved by the court as soon as possible before second guessing or circumstances reverse the positive force behind approval of the Agreement wanes or even reverses."

Subsequently, on July 3, 2014, Hooy filed a petition for final distribution that included a request for $24,331.83 in legal fees and costs incurred by his firm. The figure consisted of approximately $9,600 in statutory fees and $13,307.50 in extraordinary fees, more than half of which ($6,552.50) was incurred in connection with "negotiating, drafting and obtaining court approval" of the parties' written distribution agreement.[7] That portion of the fee request was premised on Hooy's assertion, made under oath, that a "dispute" had arisen between Cornelia and Nefas concerning the succession of decedent's assets, which had resulted in the "negotiation" of a "deal" that was memorialized in the distribution agreement he prepared.

The Hooy firm's fee claim precipitated a billing dispute with Cornelia, who ended up filing a written, pro per opposition accusing Hooy of both ginning up excessive fees and malpractice. She also reported Hooy to the State Bar.[8] Nefas opposed the request

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releases given under the agreement (¶16). And the agreement included a prevailing party fee clause (¶18). At oral argument, counsel for the Hooy firm represented to this court that the release was not intended to, and does not, encompass claims against it for malpractice, a concession we accept. Nonetheless, these provisions, collectively, might reasonably be expected to deter a client from filing a malpractice claim, or at least to think twice before doing so.

[7] The other portion of the requested extraordinary fees principally related to the sale of the decedent's house.

[8] The full record of State Bar proceedings are not in the record. However, the State Bar eventually closed the case, finding that "it does not appear [Hooy] misrepresented to the court that a dispute existed" because both Cornelia and Nefas had signed the written agreement acknowledging that there was a dispute. In addition, it noted that "mere negligence . . . does not provide grounds for discipline by the State

too, denying (as previously noted) that he had had any dispute with Steinberg, with whom he claimed to be on good terms, and asserting he had hired a lawyer only because Hooy had told him to do so.

At an (unreported) hearing on August 19, 2014, a temporary judge presided and noted the seriousness of Cornelia's allegations, and Hooy asked to be relieved as counsel. The temporary judge continued the hearing on the petition for final distribution (including the Hooy firm's fee claim encompassed within it) as well as Hooy's request to withdraw, and advised Steinberg to look for new representation. On September 15, 2014, two weeks before the continued hearing, Hooy filed a substitution of counsel, leaving Cornelia in pro per. Cornelia then retained new counsel who appeared on her behalf at the continued hearing on September 30, 2014, and the parties were ordered to mediation.

It was at this point, apparently after an unsuccessful mediation, that Cornelia sought to unwind the distribution agreement, efforts that would prove unsuccessful and would culminate a year and a half later with the attorney's fee award and order of final distribution at issue in this appeal. On January 28, 2015, the day before the date of a continued hearing on the petition for final distribution, she filed a verified petition asking the probate court to void the distribution agreement on multiple grounds, including that it had been procured by means of misrepresentations by her former counsel and undue influence. She contended, among other things, Hooy had fabricated a dispute between the two supposed heirs to cover up its own malpractice, took advantage of her age and emotional vulnerability in the aftermath of her husband's death and the circumstances surrounding it, and then when she began asking questions about the draft distribution agreement "grew increasingly adamant" that she come to his office that very day and sign it, which she did even though still uncomfortable, and within two hours had it filed with the court.

Bar." It said it would revaluate Cornelia's complaint if the probate court made a finding of wrongdoing by Hooy, and invited her to submit a copy of any such finding.

Cornelia's request generated protracted and hard-fought litigation.[9] For example (and not purporting to be exhaustive), in July 2015, Cornelia sought to disqualify Nefas's lawyer (for reasons not in the record). Nefas's counsel responded a week later with a request to remove her as administrator; its premise was that she was now claiming in her petition to void the distribution agreement that she hadn't been of sound mind two years earlier when she had agreed to split the estate with Nefas. The motion was granted, and she was relieved as administrator and a successor was appointed. Although the probate court removed Cornelia as administrator on the basis of a diminished mental state, it denied her petition to void the distribution agreement premised (in part) on the same theory; apparently disposing of her petition as a matter of law, it granted a motion by Nefas for judgment on the pleadings on her petition. That ruling is not on appeal, and the basis for the court's ruling is not in the record.

Along the way, in August 2015, the court entered two orders requiring Cornelia to pay a total of $37,093 in legal fees and costs to Nefas pursuant to the attorney's fee clause contained in the distribution agreement they had signed. In an August 5 order, it awarded him $33,193 in connection with Cornelia's unsuccessful petition to void the agreement (consisting of $25,893 in attorney's fees and $7,300 in costs), and in another August 5 order, another $3,900 in connection with Cornelia's unsuccessful motion to disqualify Nefas's counsel. The latter $3,900 fee order contains a handwritten notation specifying that "[t]hese fees should be paid from Cornelia Steinberg's share of the estate."

Despite having substituted out of the case as Cornelia's counsel in September 2014, and with no apparent interest other than the pursuit of his firm's own legal fees and costs, Hooy actively continued to participate in the case and he did so extensively, making multiple court appearances and filing numerous pleadings taking positions directly adverse to his former client, Cornelia, in an effort to block her attempt to

[9] In conjunction with her petition to void the agreement, she also filed a spousal property petition requesting that all of the estate assets pass to her summarily, without formal administration (see Prob. Code, § 13500 et seq.).

challenge the distribution agreement. Hooy argued, among other things, that it would be equitable to award half the estate to Nefas and impugned Cornelia's motives. His filings went far beyond responding to accusations of professional misconduct and, in substance, sided unequivocally with Nefas on the merits of the succession dispute as well as ancillary procedural matters.[10] His filings also repeatedly disclosed privileged communications; disclosed client confidences; admitted Cornelia "had the stronger hand if she forced Mr. Nefas to litigate"; and, in a change of tune, characterized her decision to share half the estate with Nefas not as motivated by a desire to settle legitimately disputed claims but "in honor of what her deceased husband wanted her to do." The Hooy firm even sought and obtained an order requiring its former client to submit to a psychiatric mental examination, and agreed to split the cost ($12,000) with Nefas. On

[10] For example, he filed a 10-page opposition to her petition to void the distribution agreement arguing, among other things: she had not properly noticed the hearing, in violation of the Probate Code; the distribution agreement was supported by adequate consideration because Nefas "g[a]ve up any claims he had against the estate" and "gave promises to Steinberg that gave her the peace she sought on a range of issues" he detailed, thereby avoiding "an unnecessary and potentially costly fight"; and that "fairness and equity favor the agreement to equally split" the estate under the circumstances (about which he expounded at some length) and "[o]ne can only imagine the motivation for Steinberg to now want all the estate's assets and leave Mr. Nefas with nothing."

He filed a 7-page opposition to her spousal property petition that was confined exclusively to the merits of her request to avoid formal probate. The opposition to her spousal property petition not only addressed various technical aspects of probate procedure, but it repeatedly touted Nefas's interests at the expense of Cornelia's (arguing, for example, she was seeking to "deprive" Nefas of the benefit of their bargain whereby some of *his* attorney fees would be paid by the estate, and that having given up one-half of the assets to Nefas, she "cannot now seek to thwart that agreement by her spousal property petition"). It asked the court to *order* her to file a petition asking the court to administer all property passing to her, invoking as the reason "her fiduciary duties to Mr. Nefas." The opposition even went so far as to argue technical minutiae in an attempt to thwart Cornelia's request (contending, for example, her spousal property petition was not in proper form because it was not on a required Judicial Council form, and she had filed no proof of service with the court). Hooy appeared at the July 30, 2015 hearing on the spousal property petition, and it was denied. He also appeared at the August 3, 2015 hearing on Cornelia's motion to disqualify Nefas' counsel.

one day alone (June 22, 2015), Hooy billed $2,010 in connection with preparing that motion against his former client.

The firm later sought to justify all of its actions against its former client on the theory that they were undertaken in order to "defend its original fee request." By seeking to void the distribution agreement and inherit the entire estate for herself, it argued, Cornelia was "essentially attack[ing] [the Hooy firm's] fee request from another angle."[11]

Eventually, in August 2016, after Cornelia's petition had been denied, the successor administrator petitioned for allowance of compensation to various professionals and for final distribution, and Hooy at the same time filed a petition for payment of his firm's attorney's fees and costs. His new claim encompassed the earlier, unadjudicated one that sought approximately $24,000 in fees and costs for work Hooy's firm had done while representing Cornelia in her capacity as administrator, plus another $85,525.69 in extraordinary compensation ($78,062.50 in extraordinary fees and $7,463.19 in extraordinary costs). Virtually all of the additional extraordinary compensation it sought was for legal work his firm performed after it had substituted out as her counsel on September 15, 2014.[12] According to supporting invoices, the firm billed only $1590 in additional fees before substituting out of the case. Although its amount is not directly at issue on appeal, Nefas's former lawyer lambasted the Hooy firm's request for additional extraordinary compensation, telling the probate court that "[i]t shocks the conscience that Robert J. Hooy spent $78,062.50 defending fees for

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[11] Whatever else one might make of that theory, it bore no relation to the narrow provision of the distribution payment guaranteeing the payment of some of Cornelia's and Nefas's attorney's fees out of estate assets; i.e., those incurred for "negotiating, drafting and obtaining court approval" of the agreement. As noted, Hooy's original fee request sought $6,552.50 for such services; that was all.

[12] That portion of the fee request claimed $42,912 in connection with opposing Cornelia's petition to void the distribution agreement, $2,100 in connection with her efforts to disqualify Nefas's lawyer and Nefas's efforts to remove her as the estate's representative, and another $19,100 to prepare the fee petition itself. It also claimed $10,535 in time to oppose Cornelia's objections to its original request for attorney's fees as well as $3,355 to respond to her State Bar complaint.

extraordinary services of only $13,307.50." And "shocks the conscience" was perhaps an apt characterization: according to Hooy's own submissions in the probate court, his firm billed more than twice as many hours *after* substituting out of the case as it did when it represented the estate (108.5 hours before, 275.6 hours afterwards), which accounted for the lion's share of the firm's final fee request. A remarkable $43,000 alone was sought in connection with fighting Steinberg's petition to void the distribution agreement. When its billings came under scrutiny, the Hooy firm persisted in attacking its former client, viciously and without any apparent restraint.[13]

At a hearing on September 27, 2016, the probate court awarded the Hooy firm $106,477.02 of its requested attorney's fees and costs—virtually all that the Hooy firm had requested—but it ruled that a portion was to be satisfied solely out of Steinberg's share of the estate because of her conduct in the case (i.e., $82,170.69 in extraordinary fees and costs).[14] Given the estate's assets, this meant that only $57,160 was ordered distributed to the Hooy firm in the court's final order of distribution, resulting in a $49,317.02 shortfall to the firm. By contrast, Nefas, a beneficiary, came away with $107,890.33 (including payment of the fees previously awarded to him), an amount that would have been more than sufficient to satisfy the difference. We set out the details of

[13] For example, in a filing responding to criticisms by Nefas's former lawyer to its extraordinary fee request, it told the court: "Had Steinberg accepted the distribution mandated by the Distribution Agreement she made with Nefas, both she and he would have taken home an estimated $83,553.44. Having decided that she wanted all of the money in the estate (and that Hooy & Hooy should not be paid for its hard work), she alone caused the financial wreckage that followed." It told the court in that filing that Cornelia's actions had cost the estate nearly $20,000 in taxes that could have been avoided and another $9,610 in statutory fees for the successor administrator "because she forced a change in representation," and had "put Nefas to a great deal of trouble" for which he had been awarded legal fees. It said *her* actions "shock the conscience, given the wreckage she wrought, and she alone should bear the consequences" because of her "greed and the consequences thereof."

[14] The probate court's sole express reduction was for $3,355 that Hooy requested in connection with the State Bar complaint.

the distribution in the footnote.[15] The court ruled the Hooy firm was entitled to "recover any shortfall from Steinberg using alternative procedures" and that any later-discovered estate assets could be used for the same purpose, stating that "any estate property not now known or discovered to which [Steinberg] is entitled shall first be paid to [Hooy] to satisfy the remaining . . . fees awarded." All that Cornelia received from her husband's estate was repayment of approximately $9,000 she had advanced for his funeral.

The court's ruling was memorialized in two written orders: an order filed on October 17, 2016, granting the Hooy firm's petition for an award of extraordinary fees and costs, and an order filed on October 4, 2016, disposing of the successor administrator's first and final account and petition for final distribution.

Hooy's firm then timely appealed both orders.

DISCUSSION

Although the Hooy firm's briefing is lengthy and somewhat complex, at bottom it raises a single issue of statutory interpretation: whether the probate court was required by section 11420 to order full payment of its attorney's fees award before distributing the residue of the estate to Nefas. Put another way, the issue is whether the court had any discretion to subordinate the payment of the Hooy firm's award of attorney's fees and costs to the payment of Nefas's two attorney's fee awards against Cornelia and to his

[15] There was $184,191.26 in cash in the estate. The court distributed it, first, by reserving $500 in the estate and then directing the payment of $42,947.25 for various estate expenses, including $24,306.33 to Hooy's firm for the legal fees and costs it had incurred up to and including the filing of its initial fee petition (the other expenses were $9,610.83 in fees for the administrator and $9,030.09 to Steinberg to reimburse her for funeral expenses). After those expense deductions, this left $140,744.01 to be distributed, which is where the Hooy firm contends the court went astray. Out of that residual, the court next ordered that $107,890.33 be distributed *to Nefas* (consisting of $70,372 which the court characterized as his 50 percent share of the "net distributable estate" and $37,518.33 in previously awarded attorney's fees). This in turn left only $32,853.68 for distribution to the Hooy firm to satisfy the rest of the court's fee and cost award (i.e., $140,744.01 minus Nefas's $107,890.33). That residual figure, combined with the $24,306.33 the court ordered distributed to Hooy's firm off the top, totals $57,160.01 in payment of the Hooy firm's attorney's fees and costs.

beneficial share of the residual estate, and instead leave the Hooy firm to pursue Cornelia for the shortfall "using alternative procedures."

Nefas has not filed a respondent's brief, and both the successor administrator and Cornelia urge us to affirm the court's ruling as correct.

At the outset, we are troubled by the appearance of so many potential ethical violations by the Hooy firm. They began with the initial consultation in which the Hooy firm dispensed legal advice to both Cornelia and Nefas, raising thorny issues as to whether the two were joint clients but whose interests were at least potentially adverse. (See generally Vapnek, et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2018) ¶¶ 3:86–3:89.1.) Next, as we have noted, the firm drafted a settlement agreement with several potentially self-dealing provisions. (But see Cal. Rules of Prof. Conduct, former rule 3-310(B)(4) [requiring written disclosure where attorney has a "legal, business, financial or professional interest in the subject matter of the [client's] representation"].) All this culminated, finally, with the firm indisputably turning on its former client after it had withdrawn from representing her, attacking her full force on the merits of a matter in which it had previously represented her and lending considerable aid and firepower to her adversary, Nefas. It is well-settled that a lawyer's duty of loyalty survives termination of the attorney-client relationship. An attorney " 'may not do *anything which will injuriously affect [the] former client in any matter in which [the attorney] formerly represented [the client]* nor may [the attorney] at any time *use against [the] former client knowledge or information acquired by virtue of the previous relationship*.' " (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821, italics added.) And, as we have noted, it also disclosed privileged information and client confidences. Simply put, this probate matter is an issue-spotting exercise in professional ethics that could rival a law school exam. Nobody has argued that the Hooy firm's fees should have been denied outright, or now should be disgorged, due to conflicts of interests (see generally Vapnek et al., ¶¶ 5:1026 et seq.), and we will not decide that question.

Having said that, we agree with the Hooy firm that the probate court's order of distribution was erroneous. The estate's personal representative is allowed "all necessary expenses in the administration of the estate" (§ 11004), including compensation for the services of its attorney which must be "charge[d] against the estate in the amount allowed" by the court. (§ 10830, subd. (c).) Although the statutory probate scheme has undergone many revisions over the years, the rule that attorney's fees are chargeable to the estate as an expense of administration is one of longstanding. (See *In re Levinson's Estate* (1895) 108 Cal. 450, 458; *Estate of Wong* (2012) 207 Cal.App.4th 366, 375 (*Wong*).) Recoverable attorney's fees fall into two categories: compensation for "ordinary services" which is based on a percentage value of the estate set by statutory formula (see § 10810), and " '[s]ervices that are not involved in the typical probate case, commonly known as "extraordinary services," [which] may be paid out of estate assets at the discretion of the probate court' " in an amount determined to be just and reasonable. (*Wong*, at p. 375; § 10811, subd. (a).) The latter category includes compensation for attorney's fees incurred in connection with establishing and defending the attorney's own fee claim. (*Estate of Trynin* (1989) 49 Cal.3d 868, 871 (*Trynin*) [construing statutory predecessor to section 10811, former section 910]; see also *Estate of Condon* (1998) 65 Cal.App.4th 1138, 1141, 1148 [awarding *Trynin* fees in appeal governed by section 10811].) And as we explained in *Wong*, " 'attorneys' fees that are properly considered an expense of administration, whether routine or extraordinary, are payable only out of the estate' " and an attorney's " 'sole remedy' " is to seek their recovery from the probate court. (*Wong*, at p. 375.)

Section 11420 governs the priority of distribution of estate debts. It classifies administrative expenses as payable before any other class of debt (§ 11420, subd. (a)(1)), and specifies further that "[n]o debt of any class may be paid until all those of prior classes are paid in full." (*Id.*, subd. (b).) Thus, "[u]nder section 11420, administrative expenses, which include attorney fees, must be paid before the estate pays general creditors . . . ." (*Estate of Stevenson* (2006) 141 Cal.App.4th 1074, 1090 (*Stevenson*).)

Indeed, the Hooy firm conceded as much in oral argument, acknowledging that "If there aren't any resources to pay the attorneys, the attorney does not get paid."

Despite this statutory scheme, the probate court ruled that it would not be fair in the circumstances of this case to require Nefas to bear equal responsibility for payment of the Hooy firm's fees and costs by ordering their payment out of the estate assets before distributing the residue of the estate. Instead, it directed that a portion of the Hooy firm's extraordinary fees and costs come out of Cornelia's share alone, in effect rendering her personally liable for any amount exceeding what was available from her net distributable portion of the estate. This was error. As our Supreme Court has explained, an award of attorney fees for extraordinary services in probate "is not a fee-shifting mechanism at all," but is "paid from the estate for which the attorney services were performed, not from a litigation foe." (*Trynin, supra*, 49 Cal.3d at p. 876.) Extraordinary fees constitute a distinct category of fee award, "in which an attorney fee is statutorily authorized and subject to court approval *but not payable by a litigation opponent*." (*Id*. at p. 877, italics added.) What is more, compensation for extraordinary services "must be rendered on behalf of the estate and not merely for the benefit of a particular person interested in the estate. *The executor has no duty to support the position of any party as to the manner in which the estate is to be distributed*, and, if the executor employs an attorney to assist in determining questions of this nature, extraordinary attorneys' fees are not allowed." (14 Witkin, Summary of Cal. Law (11th ed. 2017) Wills and Probate, § 578, p. 633 [citing cases], italics added.) By shifting the payment of the Hooy firm's extraordinary fees and costs to Cornelia, the probate court improperly penalized her for taking a position concerning the manner in which the estate was to be distributed when not even the successor administrator, let alone the Hooy firm which by then had no formal role whatsoever in the case, had a duty to weigh in on that subject.

Cornelia nevertheless defends what the probate court did, but for reasons that do not persuade us. She argues principally that the court properly distributed the funds this way on the basis of equity. But, as just explained, the statutes do not confer discretion to depart from the statutory order of priority governing the payment of extraordinary

attorney fees in order to penalize one beneficiary and protect another. She also argues the probate court was constrained to rule as it did, because it had previously ordered Cornelia to pay attorney's fees to Nefas in two orders and those prior orders were never appealed, and because Hooy's firm delayed more than a year to claim some of its fees.[16] We disagree. The court's previous orders that Cornelia was *liable to* Nefas for a total of approximately $37,000 in legal fees (including its ruling that a portion of that sum—i.e., the $3,900 award—was payable from her share of the estate) were rulings as between her and Nefas only. Neither order purported to prioritize the payment of those fee awards over any expense of the estate. Further, those prior fee awards, which were based on the attorney fee provision of the distribution agreement, are personal debts of Cornelia not debts of the estate (see § 11401 [defining "debt"]). Because an order finally distributing the assets of a solvent estate to beneficiaries is authorized only after "all debts have been paid or adequately provided for" (§ 11640, subd. (a)), those personal liabilities can be satisfied out of Cornelia's distributable share of estate assets only after making provision for full payment of all administrative expenses, including the Hooy firm's fee award.

Taking a different tack, the successor administrator concedes that, under section 11420, attorney fees are administrative expenses that must be paid before general creditors. But the successor administrator urges us to affirm the ruling anyway as an appropriate exercise of the probate court's discretion, contending the probate court "implicit[ly]" awarded the Hooy firm only $57,160 in extraordinary fees and costs and urging us not to disturb the court's assessment of that amount. This argument brings to the fore what we perceive to be an inconsistency in the court's ruling.

On the one hand, it appears the probate court intended to award the Hooy firm $106,477.02 in attorney's fees and costs, stating that amount of the Hooy firm's

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[16] Her brief also argues the court properly awarded her reimbursement for funeral expenses, but that aspect of the court's ruling is not in question, and she does not explain its relevance to Hooy's argument concerning the priority of distributions. She also argues Hooy's unclean hands precludes him from "petition[ing] this court" for an order directing payment of all of his firm's attorney's fees, but it does not appear she made an unclean hands argument below.

requested fees and costs were "necessary, just and reasonable." Its only express reduction was to deny the firm's request for $3,355 in fees associated with the defense of Cornelia's State Bar complaint. The only reason the court did not order the entire $106,477.02 award *distributed* to the Hooy firm is because Cornelia's net share of the estate was insufficient to satisfy that portion of the award consisting of $82,170.69 in extraordinary fees and costs that the probate court deemed it appropriate for Steinberg to bear alone. And, even though the probate court found that "the extraordinary fees awarded to Hooy & Hooy . . . exceed [Steinberg's] share of the probate estate," it ordered that the Hooy firm could "recover any shortfall from Steinberg using alternative procedures." However, it also ruled that any later-discovered assets could be used for the same purpose, stating that "any estate property not now known or discovered to which [Steinberg] is entitled shall first be paid to [Hooy] to satisfy the remaining . . . fees awarded." This suggests the court intended to award the Hooy firm the entire amount of attorney's fees and costs specified in its order. On the other hand, the probate court clearly did not intend the Hooy firm to recover any significant portion of its requested extraordinary fees and costs from Nefas's share of the estate (at least as it was then understood to be, i.e., apart from any not-yet-discovered assets), which would have resulted had the court awarded a sizeable sum yet followed the statutory priority scheme correctly. Rather, it intended that they would come entirely out of Cornelia's share of the estate and her personal assets. Since the court clearly did not intend for these fees to be paid out of the estate, we cannot determine what amount of extraordinary fees and costs it *would* have found "just and reasonable" (§ 10811, subd. (a)) if it had understood the fees would be paid from the only source legally permissible, i.e., the estate assets, and that their payment of the fees would be given statutory priority ahead of other debts and claims. Particularly in light of the fact that the Hooy firm's efforts after it substituted out of the case appear to have done "virtually nothing to benefit the estate" (*Stevenson, supra,* 141 Cal.App.4th at p. 1091), it is appropriate in these circumstances for us to remand the Hooy firm's request for extraordinary attorney fees and costs for further proceedings.

An appellate court " 'must have power to do that which justice requires and may extend its reversal as far as may be deemed necessary to accomplish that end.' " (*Estate of McDill* (1975) 14 Cal.3d 831, 840.) Because the court's decision concerning the amount of extraordinary fees and costs it intended to award the Hooy firm is interrelated with the priority of their payment, we reverse both portions of the appealed orders and remand the Hooy firm's request to recover extraordinary fees and costs for further proceedings. (See *Marriage of Rosan* (1972) 24 Cal.App.3d 885, 899 [reversing child support order along with appealed reversing spousal.)

DISPOSITION

The October 4, 2016, and October 17, 2016 orders are vacated and appellant's request for an award of extraordinary attorney's fees and costs is remanded for further proceedings consistent with this opinion. The parties shall bear their own appellate costs.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.